IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.T.SANKARAN

TUESDAY, THE 4TH DECEMBER 2007 / 13TH AGRAHAYANA 1929

MFA.No. 96 of 2002(B)

OP(MV).2246/1994 of MOTOR ACCIDENT CLAIMS TRIBUNAL, MANJERI
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APPELLANT: APPELLANTS/CLAIMANTS:
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1. **ALAVI, PARAVAKKAL HOUSE,**
   MORAYOOR AMSOM, MONGAM DESOM,
   MONGAM P.O., MALAPPURAM DISTRICT.

2. **U.P. AMINA, W/O. ALAVI,**
   MORAYOOR AMSOM, MONGAM DESOM.

BY ADV. SRI.K.P.MUJEEB

RESPONDENTS: RESPONDENTS/RESPONDENTS:
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1. **SIDDIQUE. P., S/O. MOHAMMED,**
   PULLIYALI HOUSE, KOLAKKOTUCHALI P.O.,
   CHELEMBRA, MALAPPURAM DISTRICT.

2. **P. ABDUL KADER, S/O. MOHAMMED HAJEE,**
   PODENGAL HOUSE, KOLAKKATUCHALIL P.O.,
   MALAPPURAM DISTRICT.

3. **THE ORIENTAL INSURANCE CO.LTD.,**
   KOZHIKODE.

BY ADV. SRI.VPK.PANICKER
SRI.P.SAMSUDIN
SRI.P.SIDDIQUE

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 04/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.T.SANKARAN, JJ.

M.F.A.No.96 OF 2002

Dated 4th December, 2007

JUDGMENT

Koshy,J.

A 10 year old boy sustained fatal injuries and succumbed to injuries in an accident occurred on 10.3.1994. Father and mother claimed a compensation of Rs.1,53,500/= alleging that the accident occurred due to the negligence of the driver of the vehicle insured by the 3rd respondent insurance company, but, Tribunal awarded Rs.45,000/=as compensation. Only quantum of compensation is disputed in this appeal.

2. If we go by the formula adopted in the second schedule, annual notional income can be taken as Rs.15,000/= and one-third has to be deducted. Therefore, notional dependency income is Rs.10,000/=. It is true that he was aged only 10. What he would have become in life is a matter beyond imagination. Therefore, we have to adopt the second schedule for calculation of compensation. In section 163-A claims negligence on the part of the driver of the offending vehicle need not be proved. However, in section 166 claims compensation is payable only if the driver of the offending vehicle is negligent. Therefore, according to the claimants, in section 166 claims the compensation should be a higher amount. But, a three member bench of the Supreme Court in **Smt.Supe**

Dei and others v. **M/s.National Insurance Company Ltd. and another** (JT 2002 (Suppl.1) SC 451) and recently in **A.P.S.R.T.C** v. **M.Pentaiah Chary** (2007 AIR SCW 5689) held that even in section 166 claims second schedule should be taken for guidance. Second schedule was framed in 1994 and the accident occurred in the same year. Under the second schedule, for section 163-A claims 15 is the multiplier for children up to 15 years. Affidavit filed by the father in 2001 shows that he was aged 48 in 2001. The accident occurred in 1994. If that be so, his age was only 41 at the time of the accident and the mother's age is even below the above. It is true that if compensation is calculated under Section 163-A, age of the claimants has to be looked into if the victim is an unmarried person. For persons between the age of 40 and 45 also 15 is the multiplier. Therefore, 15 is the apt multiplier and the compensation payable will be Rs.1,50,000/=. The Tribunal has awarded Rs.2,000/= for funeral expenses, Rs.2,500/= for loss of estate and Rs.3,000/= for pain and suffering. There is no reason for changing the same. It is submitted that the deceased was treated in K.P.M. Hospital, Malappuram and there he succumbed to the injuries and they have spent a large amount for treatment as well as transportation from the place of incident to the hospital and thereafter his dead body was transported in ambulance to the house. We award Rs.2,500/= for treatment

expenses as well as transportation expenses. Thus total compensation payable is Rs.1,60,000/=. The Tribunal awarded only Rs.45,000/=. Therefore, appellants are entitled to Rs.1,15,000/= more than that was awarded by the Tribunal. The above amount should be deposited by the third respondent insurance company with 7% interest from the date of application till its deposit. On deposit of the amount, appellants are allowed to withdraw the same in equal proportion.

J.B.KOSHY
JUDGE

K.T.SANKARAN
JUDGE

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